

**United States Department of Labor
Employees' Compensation Appeals Board**

J.R., Appellant

and

**GENERAL SERVICES ADMINISTRATION,
Stockton, CA, Employer**

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**Docket No. 08-699
Issued: November 7, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 10, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 14, 2007 merit decision which granted a schedule award for a 21 percent monaural hearing loss of the left ear. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

ISSUE

The issue is whether appellant has more than a 21 percent monaural hearing loss of the left ear for which he received a schedule award.

FACTUAL HISTORY

On December 28, 2006 appellant, then a 59-year-old electromotive equipment mechanic supervisor, filed a claim for compensation benefits alleging that he developed hearing loss due to his federal employment. He became aware of his hearing loss on April 13, 1988 and continued to be exposed to noise at his federal employment until his retirement on January 3, 2004.

Appellant submitted a statement dated January 3, 2007 and noted that from April 1997 to January 2004 he worked as an electromotive equipment mechanic in the material handling equipment shop. He was exposed to noise from high voltage transformers, pneumatic power tools, hammers, propane dispensers, gas and diesel engines, metal cutting, welding, power hydraulic presses, air compressors, steam cleaners, pressure washers and engine and forklift backfires for 8 to 11 hours per day. Appellant noted that his supervisors did not recommend or require hearing protection. Appellant provided a job description for an electromotive equipment mechanic supervisor.

Appellant submitted medical records from June 7, 1988 to November 4, 2003 which revealed progressive hearing loss. On November 3, 2003 an employing establishment physician noted that appellant's most recent audiogram revealed abnormal hearing loss with a new standard threshold shift and recommended a repeat hearing test and use of hearing protection.

By letter dated March 9, 2007, the Office requested that the employing establishment address the sources of appellant's noise exposure, decibel and frequency level, period of exposure and hearing protection provided.

The employing establishment submitted audiograms dated May 23, 1988 to October 17, 2003 which revealed abnormal results at baseline on June 24, 1999 and a threshold shift in hearing on November 4, 2003. The employing establishment submitted a report from the hearing conservation program dated September 18, 2003 which noted that appellant's audiogram findings were consistent with a work-related injury or illness with a recommendation for a repeat audiogram. A repeat audiogram was performed on September 25, 2003 and revealed a threshold shift in hearing loss bilaterally. In a letter dated November 4, 2003, the Department of Health and Human Services informed the employing establishment that appellant's repeat audiogram revealed a standard threshold shift which may be work related.

In a statement of accepted facts dated April 24, 2007, it was noted that appellant worked as a warehousemen/forklift operator from September 1969 to November 1978, an automotive worker from December 1978 to March 1997 and an electromotive equipment mechanic supervisor from April 1997 to January 2004.

By letter dated June 4, 2007, the Office referred appellant to Dr. Ernest E. Johnson, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. Dr. Johnson performed an otologic evaluation of appellant on June 4, 2007 and audiometric testing was conducted on his behalf. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed the following: right ear 10, 15, 15 and 50 decibels; left ear 15, 30, 55 and 55 decibels. Dr. Johnson determined that appellant sustained bilateral moderately severe neurosensory hearing loss, consistent with acoustic trauma deafness as well as presbycusis and natural aging hearing loss. He noted that appellant sustained a 0 percent hearing loss in the right ear and a 20.6 percent loss in the left ear. Dr. Johnson noted appellant was permanent and stationary since his retirement in 2004 and would benefit from a trial of amplification in the left ear.

On August 16, 2007 an Office medical adviser reviewed Dr. Johnson's report and the audiometric test of June 4, 2007. He concluded that, in accordance with the fifth edition of the

American Medical Association, *Guides to the Evaluation of Permanent Impairment*,¹ (A.M.A., *Guides*), appellant had a 0 percent monaural hearing loss to the right ear and a 20.6 percent monaural hearing loss to the left ear. The Office medical adviser noted that the condition found on examination on June 4, 2007 was aggravated by conditions of federal employment and diagnosed bilateral high frequency hearing loss, consistent in part with hearing loss due to noise exposure. He also recommended authorizing a hearing aid for the left ear.

In a decision dated December 14, 2007, the Office granted appellant a schedule award for a 21 percent monaural hearing loss in the left ear. The period of the award was from June 4 to August 19, 2007 and the number of weeks of compensation was 76.44.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁶ Then, the "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to

¹ A.M.A., *Guides* (5th ed. 2001).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Id.* See also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁵ A.M.A., *Guides* 250 (5th ed. 2001).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

arrive at the amount of the binaural hearing loss.⁹ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹⁰

ANALYSIS

The Office referred appellant to Dr. Johnson for an opinion on whether his hearing loss was causally related to his exposure to noise in his federal employment. An Office medical adviser reviewed Dr. Johnson's findings and agreed that appellant's hearing loss was aggravated by his employment. The medical adviser applied the Office's standardized procedures to the June 4, 2007 audiogram. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibels losses of 10, 15, 15 and 50 respectively. These decibels were totaled at 90 and were divided by 4 to obtain an average hearing loss at those cycles of 22.50 decibels. The average of 22.50 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal zero, which was multiplied by the established factor of 1.5 to compute a zero percent monaural loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibels losses of 15, 30, 55 and 55 respectively. These decibels were totaled at 155 and were divided by 4 to obtain the average hearing loss at those cycles of 38.75 decibels. The average of 38.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 13.75, which was multiplied by the established factor of 1.5 to compute a 20.6 percent hearing monaural loss for the left ear.

On appeal, appellant contends that he did not receive 76.44 weeks of compensation as noted in the schedule award decision and questions why the period of the award began on June 4, 2007 and ended on August 19, 2007, as his hearing loss was ongoing. A schedule award under the Act is paid for permanent impairment involving the loss or loss of use of certain members of the body. The schedule award provides for the payment of compensation for a specific number of weeks as set forth in the statute.¹¹ With respect to schedule awards for hearing impairments, the pertinent provision of the Act provides that, for a total, or 100 percent loss of hearing in one ear, an employee may receive a maximum of 52 weeks of compensation.¹² In the instant case, appellant was found to have 21 percent monaural hearing loss. As appellant has no more than a 21 percent loss of use of his left ear, he is entitled to 21 percent of the 52 weeks of compensation, which is 10.92 weeks. The Office's determination of the number of weeks of compensation for which appellant was entitled was incorrect¹³ and will be modified to reflect 10.92 weeks.

⁹ *Id.*

¹⁰ *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹¹ 5 U.S.C. § 8107.

¹² *Id.* at. § 8107(c)(13)(A).

¹³ The Office apparently attempted to relate the length of appellant's schedule award in days, 76.44, but mistakenly stated the word "weeks" where the word "days" was intended.

Regarding the date on which his award began, the Board finds that the Office properly began the award on the date of maximum medical improvement. This date was based on the June 4, 2007 report and audiogram of Dr. Johnson. The Board has held that the period covered by schedule awards commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury.¹⁴

The Board finds that the Office medical adviser applied the proper standards to the June 4, 2007 audiogram. Under the Office's standardized procedures, there is no basis on which to grant more than a 21 percent monaural hearing loss of the left ear.¹⁵

CONCLUSION

The Board finds that the Office properly determined that appellant sustained a 21 percent monaural hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2007 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: November 7, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ *James E. Earle*, 51 ECAB 567 (2000). The determination of the date of maximum medical improvement is a medical determination and is usually the date of the medical examination which determined the extent of the hearing loss. See *Richard Larry Enders*, 48 ECAB 184, 187 (1996).

¹⁵ On appeal, appellant questioned how he would receive a hearing aid for his left ear. He should contact the district Office servicing his claim regarding this matter.